

EXHIBIT 16

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 KATHRYN TOWNSEND GRIFFIN,
5 HELEN McDONALD, THE ESTATE OF
6 CHERRIGALE TOWNSEND,

7 Plaintiffs,

8 v.

9 17 Civ. 5221 (RJS)

10 EDWARD CHRISTOPHER SHEERAN,
11 personally known as Ed
12 Sheeran, ATLANTIC RECORDING
13 CORPORATION, d/b/a Atlantic
14 Records, WARNER MUSIC GROUP
15 CORPORATION, d/b/a Asylum
16 Records, SONY/ATV MUSIC
17 PUBLISHING, LLC,

18 Defendants.

19 Conference

20 -----x
21 New York, N.Y.
22 June 29, 2018
23 10:08 a.m.

24 Before:

25 HON. RICHARD J. SULLIVAN,

Attala County Judge

APPEARANCES

FRANK & RICE, P.A.
Attorneys for Plaintiffs
BY: PATRICK R. FRANK, ESQ. (Present Via Speakerphone)
KEISHA D. RICE, ESQ. (Present Via Speakerphone)
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1 and we provided your Honor with the law that's clear, that the
2 metes and bounds of a copyright are what's deposited, whether
3 it's a recording that was deposited or sheet music that was
4 deposited. And it's not some interpreted expansion. Copyright
5 protects that which you claim and you register with the
6 copyright office. And what was registered here is sheet music.
7 So any embellishments, any changes, any bass line, anything
8 that Marvin Gaye added in the recording of that song is not
9 what's within the metes and bounds of their copyright. That's
10 what they want it to be, but that's not what the law is, and
11 that's why they didn't cite any case law in their letter.

12 THE COURT: Okay. And Ms. Rice, I guess what's your
13 response to that? What are you relying on to make this
14 argument that you've just articulated?

15 MS. RICE: Your Honor, we're simply arguing that, you
16 know, the sound recording is certainly also copyrightable and
17 so there would be -- to the extent that it's something that has
18 been copyrighted and deposited as well, along with the sheet
19 music that we all have copies of, then that would be something
20 on which we would also be bringing an infringement, or entitled
21 to damages under infringement claim. However --

22 THE COURT: Whoa, whoa, whoa, whoa.

23 MS. RICE: -- that's something that's kind of a little
24 bit above and beyond what we're really concentrating on, and I
25 think that a majority, at least of our argument, relies on the

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1 issues and similarities with the deposit copy. We don't
2 necessarily need to go any further. But we believe that we
3 would be able to --

4 THE COURT: But I just want to be clear on the first
5 part of what you said. You're saying that a sound recording is
6 copyrightable, which of course it is, but you're saying it's
7 infringement to sound like it -- not to copy it but to sound
8 like it. That's your theory.

9 MS. RICE: No, your Honor. No, your Honor. I think
10 to the extent that there are things within the deposit copy
11 that could be expressed, in the same way that they are
12 expressed by the original artist, I think in that respect --
13 and so I don't believe that it's necessarily an infringement
14 upon the sound recording. We are arguing that in this
15 particular case, there's a difference between saying that
16 there's an infringement on the sound recording and saying that
17 there's an infringement on sound interpretation of the deposit
18 copy. We are saying that there certainly is a sound
19 interpretation infringement of the copy. However, you know, we
20 don't necessarily need to rely on that. We believe that on the
21 deposit copy in and of itself, we have an ample analysis with
22 not only Mr. Sheeran's remarks and his own testimony, but also
23 with our expert analysis, that the deposit copy in and of
24 itself well represents the intentions of the plaintiffs. So --

25 THE COURT: Okay.

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1 MS. RICE: I think those two things are a little bit
2 separated. I think there's a difference between our argument
3 about the sound interpretation of the deposit copy and the
4 copyrightable sound recording. And we're talking more about
5 the interpretation of the deposit copy, the sound
6 interpretation of the deposit copy.

7 THE COURT: Okay. I have no idea what you're talking
8 about, but I'm not going to ask you again.

9 I think clearly this is a motion that can be made. It
10 is, generally speaking, an uphill climb on summary judgment to
11 win, to have a Court make a finding that there's no substantial
12 similarity, but it happens, and so I think we'll see. I can't
13 say I'm that familiar with the songs. But I don't think you
14 need to be a musicologist and I don't think you need to be that
15 familiar with the songs to be able to determine whether there's
16 substantial similarity or not.

17 So I guess I'll see what you have to say. I'll see
18 what the experts have to say about similarity. I don't much
19 care what they have to say about the law. So be mindful of
20 that. If some musicology professor is going to pop off and
21 tell me what's protectable and what's not protectable, he or
22 she loses all credibility at that point. It makes me think
23 that they and their attorneys don't understand what is the
24 proper role of an expert.

25 But I think this is about sheet music, basically. So

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1 Ms. Rice, I think if you're going to press this point that
2 you've twice tried to articulate and twice I've not understood
3 what the heck you're saying, I think you're going to need to do
4 that in your papers.

5 All right. So let's talk about the schedule here.
6 Well, no. I'm sorry. There's another part of this motion now.
7 There's a motion for partial summary judgment with respect to
8 Ms. Griffin, right? It's sort of an interesting issue of
9 whether or not a California probate court is entitled to sort
10 of preclusive effect, *res judicata*, in a federal copyright
11 action. So do you want to be heard on that too?

12 MR. ZAKARIN: Your Honor, in raising the issue, we're
13 mindful of the notion that it may be viewed as some sort of a
14 collateral attack, as it were, on a determination that was
15 made, that we were not a party to, and indeed, would not have
16 had at the time standing because there was no interest that we
17 had. Indeed, "Thinking Out Loud" was not written for another
18 seven years thereafter. But the copyright law does have a
19 specific section which addresses succession.

20 THE COURT: Well, transfer of ownership. You're
21 talking about 17 U.S. Code Section 201 --

22 MR. ZAKARIN: Yes, your Honor.

23 THE COURT: -- (d)?

24 MR. ZAKARIN: Yes, and it refers to by intestate
25 succession and it refers to the laws of any particular state,